

1 WO

2
3
4
5
6
7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE DISTRICT OF ARIZONA**
10

11 Theresa K. Scholin,
12 Plaintiff,

13 v.

14 Commissioner of the Social Security
15 Administration,

16
17 Defendant.
18

No. CV-15-02334-PHX-GMS

ORDER

19 Pending before the Court is the appeal of Plaintiff Theresa K. Scholin (“Scholin”),
20 which challenges the Social Security Administration’s decision to deny benefits. (Doc.
21 1.) For the reasons set forth below, this Court affirms the decision of the ALJ.

22 **BACKGROUND**

23 On September 19, 2011, Theresa Scholin filed an application for disability
24 insurance benefits, alleging a disability onset date of February 1, 2005. (Tr. 22.) Her
25 claim was initially denied on January 20, 2012, and it was denied again upon
26 reconsideration on November 21, 2012. (Tr. 22.) Scholin then filed a written request for
27 a hearing and she testified before ALJ Patricia Bucci on January 3, 2014. (Tr. 22.) On
28 March 13, 2014, the ALJ issued a decision finding Scholin not disabled. (Tr. 36.)

1 In evaluating whether Scholin was disabled, the ALJ undertook the five-step
 2 sequential evaluation for determining disability.¹ (Tr. 12.) At step one, the ALJ found
 3 that Scholin had not engaged in substantial gainful activity since her application date.
 4 (Tr. 24.) At step two, the ALJ determined that Scholin suffered from the following
 5 severe impairments: obesity, diabetes mellitus, chronic dermatitis, chronic obstructive
 6 pulmonary disease (“COPD”)/asthma, JOB syndrome, mild cervical degenerative disc
 7 disease, depressive disorder, and poly-substance abuse. (Tr. 24.) She also found that
 8 Scholin suffered from numerous nonsevere impairments, including status post right knee
 9 surgery, gastroesophageal reflux disease, irritable bowel syndrome, right shoulder
 10 disorder, restless leg syndrome, osteopenia, and hepatitis C. (Tr. 25.) At step three, the
 11 ALJ determined that none of these impairments, either alone or in combination, met or
 12 equaled any of the Social Security Administration’s listed impairments. (*Id.*)

13 At that point, the ALJ reached step four and made a determination of Scholin’s
 14 residual functional capacity (“RFC”),² concluding that Scholin could “perform light work
 15 as defined in 20 CFR 404.1567(b), except the Claimant should never climb ladders, ropes

16 ¹ The five-step sequential evaluation of disability is set out in 20 C.F.R.
 17 § 404.1520 (governing disability insurance benefits) and 20 C.F.R. § 416.920 (governing
 supplemental security income). Under the test:

18 A claimant must be found disabled if she proves: (1) that she
 19 is not presently engaged in a substantial gainful activity[,] (2)
 20 that her disability is severe, and (3) that her impairment meets
 21 or equals one of the specific impairments described in the
 22 regulations. If the impairment does not meet or equal one of
 23 the specific impairments described in the regulations, the
 24 claimant can still establish a prima facie case of disability by
 25 proving at step four that in addition to the first two
 26 requirements, she is not able to perform any work that she has
 done in the past. Once the claimant establishes a prima facie
 case, the burden of proof shifts to the agency at step five to
 demonstrate that the claimant can perform a significant
 number of other jobs in the national economy. This step-five
 determination is made on the basis of four factors: the
 claimant’s residual functional capacity, age, work experience
 and education.

27 *Hoopai v. Astrue*, 499 F.3d 1071, 1074–75 (9th Cir. 2007) (internal quotation marks and
 citations omitted).

28 ² RFC is the most a claimant can do despite the limitations caused by his
 impairments. *See* S.S.R. 96–8p (July 2, 1996).

or scaffolds.” (Tr. 27.) In making this finding, the ALJ found that Scholin’s subjective testimony was “not entirely credible.” (Tr. 28.) The ALJ gave little to no weight to the treating physicians, Drs. Drachler, Monroe, Ebner and Brown. (Tr. 33–34.) Instead, she relied on the testimony of state agency’s reviewing physicians, Scholin’s work history, her “generally unpersuasive appearance and demeanor while testifying at the hearing,” and the “greater weight of the entire evidence of record” which demonstrated inconsistencies in Ms. Scholin’s testimony and statements to her health care providers (Tr. 33–34.) However, she noted that “minimal weight is afforded to the mental assessments of these reviewing physicians, as greater weight is afforded to the treating notes and clinical findings, which reflect the claimant’s mental impairment is indeed severe.” (*Id.*)

The Appeals Council declined to review the decision. (Tr. 1–5.) Scholin filed the complaint underlying this action on November 17, 2015 seeking this Court’s review of the ALJ’s denial of benefits. (Doc. 1.) The matter is now fully briefed before this Court. (Docs. 12, 16.)

DISCUSSION

I. Standard of Review

A reviewing federal court will only address the issues raised by the claimant in the appeal from the ALJ’s decision.³ *See Lewis v. Apfel*, 236 F.3d 503, 517 n.13 (9th Cir. 2001). A federal court may set aside a denial of disability benefits only if that denial is either unsupported by substantial evidence or based on legal error. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). Substantial evidence is “more than a scintilla but less than a preponderance.” *Id.* (quotation omitted). “Substantial evidence is relevant evidence which, considering the record as a whole, a reasonable person might accept as adequate to support a conclusion.” *Id.* (quotation omitted).

The ALJ is responsible for resolving conflicts in testimony, determining

³ The ALJ’s determinations that Scholin’s diabetes, spinal degeneration, and obesity did not contribute to any disability were not challenged by the claimant in her opening brief. (Tr. 29–30; Doc. 12.)

credibility, and resolving ambiguities. *See Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). “When the evidence before the ALJ is subject to more than one rational interpretation, we must defer to the ALJ’s conclusion.” *Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d 1190, 1198 (9th Cir. 2004). This is so because “[t]he [ALJ] and not the reviewing court must resolve conflicts in evidence, and if the evidence can support either outcome, the court may not substitute its judgment for that of the ALJ.” *Matney v. Sullivan*, 981 F.2d 1016, 1019 (9th Cir. 1992) (citations omitted).

II. Analysis

A. The ALJ Did Not Make a Prejudicial Error in Rejecting the Opinions of the Treating Physicians.

“A treating physician’s medical opinion as to the nature and severity of an individual’s impairment must be given controlling weight if that opinion is well-supported and not inconsistent with the other substantial evidence in the case record.” *Edlund v. Massanari*, 253 F.3d 1152, 1157 (9th Cir. 2001), *as amended on reh’g* (Aug. 9, 2001); *see Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995), *as amended* (Apr. 9, 1996) (“As a general rule, more weight should be given to the opinion of a treating source than to the opinion of doctors who do not treat the claimant.”). If a treating physician’s opinion is “not contradicted by another doctor, it may be rejected only for clear and convincing reasons.” *Lester*, 81 F.3d at 830. An “ALJ need not accept a treating physician’s opinion which is ‘brief and conclusionary in form with little in the way of clinical findings to support [its] conclusion.’ ” *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989) (quoting *Young v. Heckler*, 803 F.2d 963, 968 (9th Cir.1986)). However, even if a treating physician’s “assessments are of the ‘check-box’ form and contain almost no detail or explanation,” they should not be dismissed if the “record *supports* [the physician’s] opinions because they are consistent both with Claimant’s testimony at the hearing and with [the physician’s] own extensive treatment notes.” *Burrell v. Colvin*, 775 F.3d 1133, 1140 (9th Cir. 2014).

///

1 If the treating physician's opinion is contradicted by another doctor, the ALJ still
2 cannot reject the treating physician's opinion unless she provides "specific and legitimate
3 reasons supported by substantial evidence in the record." *Lester*, 81 F.3d at 831 (internal
4 quotations omitted). "Sheer disbelief is no substitute for substantial evidence," and thus
5 the ALJ must specify what evidence she is relying on to reject the treating physician's
6 opinion. *Benecke v. Barnhart*, 379 F.3d 587, 594 (9th Cir. 2004). "The opinion of a
7 nonexamining physician cannot by itself constitute substantial evidence that justifies the
8 rejection of the opinion of either an examining physician or a treating physician." *Lester*,
9 81 F.3d at 831. The ALJ may cite to diagnostic test results, contrary reports from
10 examining physicians, and "testimony from the claimant that conflicted with her treating
11 physician's opinion" to provide specific and legitimate reasons for rejecting the opinion
12 of a treating physician. *Id.* at 831.

13 If it is determined that an ALJ made an error while considering the weight of a
14 treating physician's opinion, the next step is to determine whether the error was
15 prejudicial. *See Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1162 (9th Cir.
16 2008) (applying the harmless error standard after determining that two of the ALJ's
17 reasons supporting his adverse credibility finding were invalid). Ninth Circuit precedents
18 "do not quantify the degree of certainty needed to conclude that an ALJ's error was
19 harmless." *Marsh v. Colvin*, 792 F.3d 1170, 1173 (9th Cir. 2015). The general rule is that
20 an error is harmless where a court can "conclude from the record that the ALJ would
21 have reached the same result absent the error." *Molina v. Astrue*, 674 F.3d 1104, 1115
22 (9th Cir. 2012). Furthermore, "the more serious the ALJ's error, the more difficult it
23 should be to show the error was harmless." *Id.*

24 **1. Dr. Drachler**

25 On April 29, 2013, Dr. Drachler, Ms. Scholin's treating pulmonologist, filled out a
26 checkbox questionnaire in which he concluded that Ms. Scholin was not able to sustain a
27 normal work position due to the functional limitations caused by her pulmonary
28

1 conditions.⁴ (Tr. 1414.) Dr. Drachler found that Ms. Scholin could not sit or stand for
 2 more than an hour at a time during an eight hour work day. (*Id.*) She also could not lift
 3 or carry more than five pounds at a time, and her symptoms were likely to cause frequent
 4 interruptions throughout her work day. (Tr. 1412–13.) Ultimately, Dr. Drachler opined
 5 that Ms. Scholin’s conditions would require her to be absent from work more than three
 6 times a month. (Tr. 1413.) The ALJ rejected the opinion of Dr. Drachler because the
 7 ALJ found that 1) the claimant did not see Drachler regularly, 2) Drachler relied too
 8 heavily on the claimant’s subjective reports of symptoms, 3) Drachler’s findings were
 9 inconsistent with the claimant’s “admitted daily activities,” and 4) Drachler’s findings
 10 were contradicted by the opinions of other examining and nonexamining physicians for
 11 the state agency. (Tr. 33–34.)

12 Drachler’s findings were contradicted by the state agency physicians, and thus the
 13 ALJ needed to provide “specific and legitimate reasons supported by substantial evidence
 14 in the record.” *Lester*, 81 F.3d at 831 (internal quotations omitted). However, the fact
 15 that his opinion was contradicted by the state agency physicians “cannot by itself
 16 constitute substantial evidence that justifies the rejection of the opinion of either an
 17 examining physician *or* a treating physician.” *Id.*

18 The ALJ supported her reasoning by other substantial evidence in the record, and
 19 thus she did not err in discrediting Dr. Drachler’s findings. Dr. Drachler was the
 20 claimant’s treating physician for her asthma and COPD for over six years. (Tr. 1534.)
 21 However, the ALJ noted that his records indicate that his interactions with Scholin were
 22 intermittent and that there were long lapses in treatment, (Tr. 29, 833.) Frequency of
 23 examination is a valid factor to consider in determining how much weight to give a
 24 medical opinion. *See* 20 C.F.R. 416.927(c)(2)(ii) (“Generally, the longer a treating
 25 source has treated you and the more times you have been seen by a treating source, the
 26 more weight we will give to the source’s medical opinion.”). The ALJ further notes that

27
 28 ⁴ Just a month after Dr. Drachler completed his assessment and determined that
 Ms. Scholin was severely limited, Ms. Scholin told mental health providers that she was
 the primary caretaker of her fiancé’s parents. (Tr. 1451.)

1 while she rarely met with Dr. Drachler, “[t]he claimant was regularly treated through her
2 primary care physician for acute exacerbations of COPD and, despite these exacerbations
3 she continued smoking cigarettes.” (Tr. 29.) Dr. Drachler notes in January of 2012 that
4 Ms. Scholin quit smoking “about 6 weeks ago.” (Tr. 831.) Yet Ms. Scholin herself
5 testified at the hearing before the ALJ that she didn’t actually quit smoking until “almost
6 a month” prior to the hearing in 2014. (Tr. 49, 60.) To the extent that Dr. Drachler relied
7 on Ms. Scholin’s assertion that she quit smoking in 2012 to form his opinions regarding
8 her limitations in 2013, he relied on information that is contrary to the record—with Ms.
9 Scholin’s own sworn testimony—and the ALJ did not err in considering this
10 inconsistency. *See Lester*, 81 F.3d at 831 (stating that an ALJ may rely on “contrary
11 reports from examining physicians, and on testimony from the claimant that conflicted
12 with her treating physician’s opinion” to discredit a treating physician”); *Morgan v.*
13 *Comm’r of Soc. Sec. Admin.*, 169 F.3d 595, 601 (9th Cir. 1999) (ALJ may consider
14 whether the claimant’s activities are inconsistent with the limitations outlined in a
15 treating physician’s opinion); *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989)
16 (explaining that an ALJ may meet the burden of providing specific, legitimate reasons
17 “by setting out a detailed and thorough summary of the facts and conflicting clinical
18 evidence, stating his interpretation thereof, and making findings.” (internal quotations
19 and citations omitted)). Inconsistencies between the treating physician’s opinion and
20 the objective medical record are also valid factors to weigh when considering how much
21 weight to assign to the treating physician’s opinion. *See Lester*, 81 F.3d at 831
22 (contradictions between the medical evidence and the treating physician’s opinion is a
23 valid consideration); 20 C.F.R. § 416.927(c)(4) (“Generally, the more consistent a
24 medical opinion is with the record as a whole, the more weight we will give to that
25 medical opinion.”) The ALJ cited to medical records reflecting Scholin’s pulmonary
26 function testing, which demonstrated “moderately severe airway obstruction” in October
27 2012 had improved in both December 2012 and October 2013 to show only “moderate
28 obstruction.” (Tr. 29.) These inconsistencies are valid considerations, and the ALJ

1 provided sufficient evidence from the record to support her assertions.

2 The ALJ also discredited Drachler's opinion by stating that his opinion was
3 "unsupported by the claimant's admitted daily activities." (Tr. 33.) Among those daily
4 activities the ALJ found that Ms. Scholin was the primary caregiver for her fiancé's
5 disabled parents with whom she resided. (Tr. 31, 32, 902, 1451.) In making this finding,
6 the ALJ cited to Ms. Scholin's mental health care treatment notes with Terros from
7 November 2011 and May 2013, in which Ms. Scholin told her counselor that she lived
8 with her fiancé and was the primary caregiver for his disabled parents. (Tr. 902, 1451).
9 Further, as the ALJ noted, in her function report filled out in December 2011 Ms. Scholin
10 identified herself as a caregiver for Terry and John Ruth—presumably her fiancé's
11 parents—for whom she made appointments and sometimes prepared lunch and dinner.
12 (Tr. at 302).⁵ The ALJ noted that this activity as well as her ability to drive
13 independently, utilize public transportation, prepare simple meals, do laundry, go out
14 alone, shop outside the home on a weekly basis, pay bills, count change, handle a savings
15 account and use a checkbook indicated that Scholin was not as limited as the limitations
16 in Drachler's opinion indicated.⁶ The ALJ further noted that "[t]he physical and mental
17 capabilities necessary to performing many of the[se] tasks . . . replicate those necessary
18 for obtaining and maintaining employment." (Tr. at 32).

19 Inconsistencies between a claimant's admitted daily activities and a treating
20 physician's opinion is an appropriate factor to consider while determining how much
21 weight to give a treating physician's opinion. *See Morgan*, 169 F.3d at 601 (favorably

22
23 ⁵ In her hearing testimony Ms. Scholin denied providing care for the disabled
24 parents of her fiancé. Rather she testified that she stayed in her room and had provided
25 no services or work since 2007. (Tr. at 57–58). Yet the ALJ was entitled to rely on the
26 Claimant's treatment records and her function report, both of which were admitted in
evidence, in finding to the contrary. Given these records, the ALJ had an adequate
evidentiary basis on which to reject Ms. Scholin's testimony that she was not the primary
caregiver to her fiancé's parents.

27 ⁶ The ALJ included other activities that Scholin participated in on a daily basis,
28 including watching movies, grooming herself, and spending time with others. (Tr. 32.)
However, the Court does not find these activities to be indicative of an ability to work or
contradictory with Drachler's finding of disability. *See generally Garrison v. Colvin*, 759
F.3d 995, 1014–15 (9th Cir. 2014).

1 referring to the ALJ's consideration of the inconsistencies between the treating
2 physician's findings of "marked limitations" and the claimant's admitted activities).
3 Here, the ALJ noted Scholin's daily activities and their inconsistency with Scholin's
4 alleged medical impairments early in her opinion. (Tr. 32.) The ALJ found that these
5 daily activities were inconsistent with the "severe physical and mental impairments"
6 reflected in parts of her medical record, (*Id.*), and further found them as a basis for
7 discounting Dr. Drachler's opinion. (*See* Tr. 33 ("Moreover, this opinion remains
8 unsupported by the claimant's admitted activities of daily living.")) Therefore, the ALJ
9 did not err in considering the inconsistencies between Scholin's daily activities and
10 Drachler's findings while determining how much weight to give his opinion.

11 Based on the present record this Court cannot conclude, however, that the ALJ
12 adequately supported her assertion that Drachler relied too heavily on the claimant's
13 subjective reports. "An ALJ may reject a treating physician's opinion if it is based to a
14 large extent on a claimant's self-reports that have been properly discounted as
15 incredible," but this generally applies where there is "little independent analysis or
16 diagnosis." *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008). Unlike
17 *Tommasetti*, the record in this case reflects that Scholin was diagnosed with asthma and
18 COPD, which were verified through diagnostic tests beyond the claimant's self-reported
19 symptoms. (Tr. 429–433, 515–16, 519, 840–41, 1535–46.) Further, the reports indicate
20 at the least that she suffered at least some episodes of "acute COPD exacerbation." (Tr.
21 429–433.) It was therefore improper to assert that Drachler relied too heavily on
22 Scholin's self-reports while forming his medical opinion when there are at least a few
23 verified instances of "acute COPD exacerbation" supported by the record.

24 Even so, however, that error was not prejudicial. The ALJ relied on other proper
25 evidence in the record to find that Drachler's medical opinion should be given little
26 weight. Specifically, she noted that Scholin did not see Dr. Drachler frequently, that Ms.
27 Scholin did not keep treatment appointments with Dr. Drachler, that she ignored
28 treatment advice and continued smoking, and that Scholin's daily activities, including

1 being the principal caregivers for her fiancé's parents, were inconsistent with his
2 findings. (Tr. 33.) Given that the ALJ had other legitimate reasons for discrediting
3 Drachler's medical opinion, this Court can conclude from the record that the result was
4 unchanged by the ALJ's error. *Molina*, 674 F.3d at 1115. The ALJ's error in asserting
5 that Drachler relied too heavily on Scholin's self-reports is therefore harmless, and does
6 not merit a remand.

7 **2. Dr. Monroe**

8 Dr. Monroe filed out a checkbox questionnaire opining that Ms. Scholin cannot sit
9 or stand for more than an hour during an eight-hour work day and is essentially precluded
10 from obtaining employment due to her medical conditions, specifically her chronic
11 dermatitis and COPD. (Tr. 1030, 1032.) Dr. Monroe also found that Scholin cannot lift
12 or carry more than five pounds at a time. (Tr. 1032.) The ALJ discredited the opinion of
13 Scholin's primary care physician, Dr. Monroe, because she found that 1) the opinion that
14 Scholin was disabled due to dermatitis, COPD and asthma was unsupported by the
15 medical evidence of record, including the physician's own treating notes, 2) his opinion
16 was internally inconsistent and 3) the course of treatment suggested by Dr. Monroe was
17 inconsistent with his description of Scholin's limitations. (Tr. 33.)

18 In rejecting Scholin's claim that she was disabled by her dermatitis, the ALJ
19 properly noted that the objective medical record as well as Scholin's activities were
20 inconsistent with his finding of severe limitations. *See Lester*, 81 F.3d at 831 (explaining
21 that "conflict with testimony from the claimant himself and with medical reports
22 contained in the record" is a valid reason for rejecting a treating physician's medical
23 opinion). The objective medical record indicated that Scholin's medical conditions
24 improved under treatment, to the point where her conditions did not severely limit her
25 behavior or activities. For example, Scholin's markedly elevated IgE level of above 6000
26 that resulted in her diagnosis of JOB syndrome decreased to 4,500 under appropriate
27 care, (Tr. at 30, 34, 890, 1018). The ALJ further noted that although Scholin denied any
28 adverse side effects from her dermatitis medication, she was non-compliant with her

1 treatment regimen, a choice that is at odds with an individual suffering from severely
2 limiting medical conditions. (Tr. at 30, 34, 882, 1020, 1023.) And that, further, Ms.
3 Scholin failed to attend scheduled appointments which resulted in a gap of treatment
4 from May 12 through January 2013. (Tr. 1403.); *see also* 20 C.F.R. § 416.927(c)(2)
5 (listing “[l]ength of the treatment relationship and the frequency of examination” as valid
6 factors to consider when weighing a treating physician’s testimony). In sum, both the
7 objective medical record as well as Scholin’s repeated decisions not to follow her
8 treatment regime are at odds with Dr. Monroe’s findings, and inconsistency within the
9 record is a valid consideration for the ALJ to weigh when determining how much weight
10 to assign to a treating physician’s medical opinion. *See Andrews v. Shalala*, 53 F.3d
11 1035, 1043 (9th Cir. 1995) (inconsistencies in the record and a treating physician’s
12 findings are valid reasons for discrediting a treating physician’s opinion).

13 The presence of discrepancies between a treating physician’s treatment notes and
14 his medical assessment is a valid reason for discrediting his opinion. *See Bayliss v.*
15 *Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005) (permitting an ALJ to discredit a treating
16 physician’s opinion based on contradictions between his findings and his treatment
17 notes). To the extent that the ALJ limits her acceptance of Dr. Monroe’s opinion based
18 on its inconsistency with his own treatment notes, she does note that “treating physicians
19 consistently observed that she appeared well, alert, and in no acute distress. . . . As well,
20 physical examinations were typically fairly unremarkable.” (Tr. 30, 736, 741, 743, 748,
21 752, 754, 1203, 1212, 1215, 1223, 1225, 1477, 1480, 1488, 1490.) In making this
22 observation the ALJ cited to Dr. Monroe’s treating notes from 2011 onward which in fact
23 reflect no serious malady from claimant. Rather, although she now claims disability from
24 2005 based on her COPD, she consults Dr. Monroe in 2011 for minor matters in which
25 her functionality seems to be reaffirmed, and Dr. Monroe routinely notes that she is in no
26 apparent distress (“nad”). (*See, e.g.* Tr. 730, 736, 748, 752, 754, 757, 1212, 1215, 1223,
27 1225, 1477, 1480, 1488, 1490.) These records are inconsistent with Dr. Monroe’s
28 finding of severe limitation, and the ALJ properly rejected his opinion based upon them.

1 As it pertains to the COPD and asthma, the ALJ rejected Scholin's claim that she
2 was disabled by her COPD and asthma for the reasons set forth in her decision and
3 reviewed in more complete detail above. (Tr. at 29, 33–34.)

4 However, based on the record currently before the Court, the ALJ did not
5 adequately support her assertion that the course of treatment suggested by Dr. Monroe
6 was inconsistent with his description of Scholin's limitations. (Tr. 33.) It is unclear
7 exactly what the ALJ meant by asserting that Dr. Monroe did not suggest a course of
8 treatment consistent with the claimant's alleged limitations: in the record, Dr. Monroe's
9 assessment lists several medications taken by the claimant, as well as their side effects.
10 (Tr. 1034.) While the ALJ did go through the medical record in detail earlier in her
11 opinion, she did not explain why the medications assigned by Dr. Monroe and listed in
12 his assessment were inconsistent with Scholin's limitations, or what treatment "one
13 would expect for a totally disabled individual." (Tr. 28.) Rather, the only support given
14 to bolster this statement is a general citation to Dr. Monroe's assessment. (Tr. 33.); *See*
15 *Thomas v. Barnhart*, 278 F.3d at 954 ("Substantial evidence is relevant evidence which,
16 considering the record as a whole, a reasonable person might accept as adequate to
17 support a conclusion.").⁷ Dr. Monroe did prescribe a course of treatment to Scholin, and
18 in the absence of further explanation, it is unclear why his course of treatment was
19 inconsistent with his finding of severe limitation. Therefore, the ALJ erred by failing to
20 provide adequate evidence for relying on this factor, even though it could be a valid
21 consideration when adequately explained. *Lester*, 81 F.3d at 831

22 Yet the ALJ did provide other substantial evidence to support other specific
23 and legitimate reasons for discrediting Dr. Monroe's opinion, and thus this error was not
24 prejudicial. As explained above, the ALJ relied on inconsistencies in the record,
25 specifically the claimant's activities and the objective medical evidence. The ALJ also
26 properly explained that Dr. Monroe's assessment was internally inconsistent because it

27
28 ⁷ In any event much of Ex. 25F, to which the ALJ generally cites to support this
insufficiently explained statement, is not legible and some of the pages are entirely blank.
(Tr. 1024–1040.)

1 asserted that the claimant is “incapable of even [a] low stress” work environment and yet
 2 also “capable of [a] low stress” work environment.” (Tr. 33, 1036.) The presence of
 3 internal inconsistencies within a physician’s opinion is a legitimate reason for
 4 discrediting their opinion.⁸ *Ghanim v. Colvin*, 763 F.3d 1154, 1161 (9th Cir. 2014) (“A
 5 conflict between treatment notes and a treating provider’s opinions may constitute an
 6 adequate reason to discredit the opinions of a treating physician or another treating
 7 provider.”). Because the ALJ provided specific and legitimate reasons to discredit Dr.
 8 Monroe’s opinion, that were supported by substantial evidence in the record, the Court
 9 can determine that the errors did not alter the ALJ’s ultimate determination, and thus the
 10 ALJ’s other error in weighing Dr. Monroe’s testimony was not prejudicial. *Molina*, 674
 11 F.3d at 1115.

12 **3. Dr. Ebner**

13 The ALJ dismissed the opinion of Dr. Ebner, the claimant’s treating dermatologist,
 14 because he claimed to treat the claimant monthly and reported “poorly controlled
 15 symptoms that would result in an inability to work,” but failed to mention the claimant’s
 16 “noncompliance or lapse in care for almost one year.” (Tr. 34.) The ALJ also discredited
 17 Dr. Ebner’s opinion because it was conclusory and unsupported by the record. (Tr. 34.)

18 The ALJ properly discredited Dr. Ebner’s opinion due to his failure to note that
 19 the claimant neglected to keep her appointments for almost a year, and that when she did
 20 take her medication, she improved. (Tr. 34.) Impairments that can be treated effectively
 21 through treatment are not grounds for disability. *Warre v. Comm’r of Soc. Sec. Admin.*,
 22 439 F.3d 1001, 1006 (9th Cir. 2006). Furthermore, Ebner’s assessment, detailing poorly
 23 controlled symptoms that preclude work, is arguably inconsistent with his earlier reports
 24 of success with medication, particularly considering Ebner’s failure to mention his
 25 patient’s noncompliance with his treatment plan in his assessment. (Tr. 34.) Because this

26
 27 ⁸ Scholin contests this interpretation of Dr. Monroe’s medical opinion and instead
 28 provides her own, but interpretation of the medical record is within the province assigned
 to the ALJ, not this Court. Therefore, because the “the evidence can support either
 outcome,” this Court accepts the interpretation provided by the ALJ. *Matney*, 981 F.2d at
 1019.

1 is a rational interpretation of the record, “we must defer to the ALJ’s conclusion.”
2 *Batson*, 359 F.3d at 1198.

3 The ALJ also noted that Ebner’s assessment was “quite conclusory” and provided
4 “very little explanation” for his reasoning. An “ALJ need not accept a treating
5 physician’s opinion which is ‘brief and conclusionary in form with little in the way of
6 clinical findings to support [its] conclusion.’ ” *Magallanes*, 881 F.2d at 751 (quoting
7 *Young v. Heckler*, 803 F.2d 963, 968 (9th Cir.1986)). The ALJ noted the inconsistencies
8 between Dr. Ebner’s “check-box” assessment and treating notes, and thus this is not a
9 situation where the “record *supports* [the physician’s] opinions because they are
10 consistent both with Claimant’s testimony at the hearing and with [the physician’s] own
11 extensive treatment notes.” *Burrell*, 775 F.3d at 1140. Therefore, the ALJ properly
12 provided specific and legitimate reasons for discrediting Dr. Ebner’s opinion.

13 **4. Dr. Brown**

14 The ALJ discredited Dr. Brown, Scholin’s treating psychiatrist, because she
15 determined that his findings were “quite conclusory” and “unsupported by this
16 physician’s own [clinical] findings,” including Scholin’s mental status examinations and
17 the Global Assessment of Functioning (“GAF”) scores. (Tr. 33.) The ALJ did a
18 longitudinal review of Plaintiff’s mental health records and noted with citations to the
19 record that “the claimant has not offered the same complaints to treating professionals as
20 she has in connection with this application.” (Tr. 30.) The ALJ noted for example that
21 she avoided people due to her skin condition not her anxiety, and related to other treating
22 physicians that her problems are primarily environmentally related. (*Id.*) Treating notes
23 through the period reflected that she had no evidence of anxiety or depression and that
24 she maintained compliance with psychotropic medication and that she denied any side
25 effects. (Tr. 30) Ms. Scholin claimed that her mental health was stable in 2012, and she
26 often failed to attend follow-up appointments, “which suggests that her symptoms were
27 not as severe as alleged.” (Tr. 31; 792–793.) The ALJ also noted that while “the
28 claimant’s symptoms increased for brief periods, this was attributed to stress and

relationship issues.” (Tr. 31.) This finding is reflected in the ALJ’s limitation of the claimant to “lower stress jobs.” (Tr. 27.)

The ALJ properly discredited Dr. Brown’s testimony because it was contrary to 1) Dr. Brown’s mental status examinations and 2) the GAF scores of record. The ALJ noted that Dr. Brown’s mental status examinations of the claimant were “fairly unremarkable.” (Tr. 33, 1045–46, 1290–91.) Earlier in her opinion, she also noted that Scholin’s GAF scores ranged from 50 to 55 ranging from some mental impairment to moderate symptoms of impairment. (Tr. 31.) The ALJ noted that GAF scores are somewhat limited due to their global nature, but they remain a relevant factor in determining a claimant’s mental health. (*Id.*) These inconsistencies, when coupled with Brown’s failure to “provide any specific work limitations,” constituted specific and legitimate reasons for discrediting Brown’s opinion, and therefore the ALJ did not err in doing so.

B. The ALJ Provided Specific, Clear and Convincing Reasons for Discrediting Scholin’s Testimony

Once a claimant establishes that objective medical evidence illustrates an impairment that could reasonably cause the symptoms alleged, “and there is no evidence of malingering, ‘the ALJ can reject the claimant’s testimony about the severity of her symptoms only by offering specific, clear and convincing reasons for doing so.’ ” *Garrison*, 759 F.3d at 1014–15 (quoting *Smolen v. Chater*, 80 F.3d 1273, 1282 (9th Cir. 2006)). This is the most stringent standard required in social security cases. *Id.* In determining whether the claimant’s testimony regarding her symptoms is credible, the ALJ can consider a multitude of factors, including:

(1) ordinary techniques of credibility evaluation, such as the claimant’s reputation for lying, prior inconsistent statements concerning the symptoms, and other testimony by the claimant that appears less than candid; (2) unexplained or inadequately explained failure to seek treatment or to follow a prescribed course of treatment; and (3) the claimant’s daily activities.

Smolen v. Chater, 80 F.3d at 1284. The ALJ can also consider “the claimant’s prior work

1 record . . . and observations by treating and examining physicians and third parties about
2 the claimant's symptoms and their effects." *Id.* at 1285.

3 The ALJ in this case fully explained her reasoning for finding the claimant's
4 testimony "not entirely credible." (Tr. 28.) The ALJ provided a detailed summary of the
5 Ms. Scholin's medical file, including the objective laboratory findings as well as her
6 treating physicians' observations that were inconsistent with Ms. Scholin's symptom
7 testimony and demonstrated favorable response to Scholin's compliance with the
8 Doctor's prescribed treatment, when she chose to follow it. (Tr. 28–31.) The ALJ noted
9 that despite Scholin's testimony asserting debilitating COPD/asthma and diabetes,
10 Scholin told her treating physicians that she did not check her blood sugar anymore and,
11 despite having told her doctor's otherwise, she testified that she continued to smoke up
12 until a few weeks before her January 2014 hearing. (Tr. 29.)⁹ This sort of inconsistency
13 between the claimant's compliance with her treatment regimen and her testimony is
14 acceptable for the ALJ to consider during the credibility analysis. *Smolen*, 80 F.3d at
15 1284. Likewise, the ALJ noted that Scholin "failed to attend scheduled appointments,
16 which resulted in a gap of treatment from May 2012 until January 2013" for her skin
17 disorder. (Tr. 30.) The ALJ further noted large gaps in the treatment of her diabetic
18 condition, (Tr. 29), her lung disorders, (Tr. 29), and her mental health, (Tr. 30–31).
19 These large and unexplained gaps in treatment were inconsistent with the level of
20 discomfort Scholin alleged, and they did "not work in the claimant's favor" during the
21 ALJ's credibility analysis. (Tr. 30.)

22
23 ⁹ In her opening brief Ms. Scholin reiterates the false assertion—apparently also
24 made to Dr. Drachler in early 2012—that she quit smoking sometime in December 2011.
25 (See Doc. 12 at 3 ("When next seen on January 31, 2012, Ms. Scholin had quit smoking
26 about six weeks earlier")); see also Dr., Drachler's February 1, 2012 letter to Dr. Monroe
27 (Tr. 831 ("She quit smoking about six weeks ago").) Nevertheless at her hearing on
28 January 3, 2014 Ms. Scholin testified in response to a question by the ALJ that she had
not smoked since December 9, 2013, "so almost for a month" prior to the hearing. (Tr.
60.) Thus, it is not clear that Ms. Scholin ever quit smoking. Despite her earlier
statement to Dr. Drachler, the ALJ certainly had the ability based on Ms. Scholin's
hearing testimony to find that Ms. Scholin had not quit smoking since December 2013.
Based on that same testimony, the Court rejects the assertion in Scholin's brief that she
quit smoking in December 2011.

1 The ALJ also relied on “observations by treating and examining physicians” in
2 making her decision. *Id.* at 1285. For example, the ALJ cited to several entries in the
3 record and noted that contrary to Scholin’s testimony, her treating physicians’ notes
4 “consistently observed that she appeared well, alert, and in no acute distress” during her
5 examinations. (Tr. 30.) The ALJ noted that this “observation is only one among many
6 being relied upon in reaching a conclusion,” but the “healthy and comfortable appearance
7 demonstrated by the claimant is in sharp contrast” to the debilitating discomfort she
8 alleges. (Tr. 20.) The ALJ also cited to an examining physician, Dr. Bowen, who “did
9 not believe that the claimant was being entirely honest” to him during his exam. (Tr. 32.)
10 Dr. Bowen’s assessment specifically noted that Ms. Scholin “was very dramatic and
11 seemed to be embellishing,” and questioned Ms. Scholin’s honesty while responding to
12 his questions. (Tr. 816.) Relying on the observations of an examining physician is an
13 acceptable method of determining a claimant’s credibility, and therefore the ALJ did not
14 err in considering Dr. Bowen’s notes while assessing Ms. Scholin’s credibility. *Smolen*
15 *v. Chater*, 80 F.3d at 1285.

16 The ALJ noted that Scholin’s reported daily activities were inconsistent with her
17 testimony. “ALJs must be especially cautious in concluding that daily activities are
18 inconsistent with testimony about pain, because impairments that would unquestionably
19 preclude work and all the pressures of a workplace environment will often be consistent
20 with doing more than merely resting in bed all day.” *Garrison*, 759 F.3d at 1016.
21 However, in this case the ALJ found that Scholin’s reported abilities to perform the
22 specific daily duties she mentioned, including acting as a care giver for her fiancé’s
23 parents, “replicated those necessary for obtaining and maintaining employment.” (Tr.
24 32.) Furthermore, the ALJ also noted that Scholin’s daily activities often shifted. (Tr.
25 31.) For example, during the hearing she testified that she stays in her room at all times,
26 but the record illustrates that is not so, as she has also reported that she serves as the
27 caregiver for her fiancé’s parents. (Tr. 31.) Inconsistencies such as these are relevant
28 inquiries into the claimant’s credibility, and the ALJ did not err in considering them or in

1 the conclusions she reached because of them.

2 **C. The ALJ Did Not Err in Relying on Vocational Testimony**

3 “A claimant establishes a prima facie case of disability by showing that his
4 impairments prevent him from doing his previous job. The burden then shifts to the
5 Secretary to show that the claimant can do other substantial gainful activity considering
6 his age, education, and work experience.” *DeLorme v. Sullivan*, 924 F.2d 841, 849–50
7 (9th Cir. 1991) (internal citations omitted). If an ALJ chooses to rely on a vocational
8 expert when making this determination, “the hypothetical [posed to the vocational expert]
9 must consider all of the claimant’s limitations.” *Light v. Soc. Sec. Admin.*, 119 F.3d 789,
10 793 (9th Cir. 1997), *as amended on reh’g* (Sept. 17, 1997) (quoting *Andrews v. Shalala*,
11 53 F.3d 1035, 1044 (9th Cir.1995)). “If the hypothetical does not reflect all the
12 claimant’s limitations. . . . the expert’s testimony has no evidentiary value to support a
13 finding that the claimant can perform jobs in the national economy.” *DeLorme*, 924 F.2d
14 at 850. However, the Ninth Circuit recently clarified that that “an ALJ’s assessment of a
15 claimant adequately captures restrictions related to concentration, persistence, or pace
16 where the assessment is consistent with restrictions identified in the medical testimony.”
17 *Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1174 (9th Cir. 2008).

18 The ALJ found that “with regard to concentration, persistence, or pace, the
19 claimant has moderate difficulties.” (Tr. 26.) She further found that Scholin cannot
20 perform any past relevant work. (Tr. 35.) Therefore, the burden shifted “to the Secretary
21 to show that the claimant can do other substantial gainful activity considering [her] age,
22 education, and work experience.” *DeLorme*, 924 F.2d at 849–50 (internal citations
23 omitted). In finding that the claimant could perform other jobs in the national economy,
24 the ALJ relied on a vocational expert’s testimony. (Tr. 35.) The ALJ did not include all
25 of Scholin’s limitations, namely with regards to “concentration, persistence and pace,” in
26 the hypothetical she posed to the expert. (Tr. 73.) However, as in *Stubbs-Danielson*,
27 although the ALJ did not include the “restrictions related to concentration, persistence, or
28 pace,” she did include other limitations within her hypothetical that are “consistent with


1 restrictions in the medical testimony.” *Stubbs-Danielson*, 539 F.3d at 1174. The ALJ’s
2 hypothetical stated that individual in question must be restricted to “lower stress” work
3 that is “simple, routine and repetitive,” and that involved only “occasional decision
4 making.” (Tr. 73.) This is in accord with the medical testimony in the record. For
5 example, the state agency physicians that met with Scholin did not note any mental
6 limitations in regards to her concentration. (Tr. 809–819, 1109–1112.) Although Dr.
7 Brown noted that Scholin struggled with “maintaining concentration for extended
8 periods,” (Tr. 1389), the ALJ properly discredited his medical opinion, and thus it did not
9 carry controlling weight in her analysis. Therefore, as in *Stubbs-Danielson*, the “ALJ’s
10 assessment of a claimant adequately captures restrictions related to concentration,
11 persistence, or pace where the assessment is consistent with restrictions identified in the
12 medical testimony,” and thus the ALJ did not rely on flawed vocational expert testimony.
13 *Stubbs-Danielson*, 539 F.3d at 1174.

14 CONCLUSION

15 While the ALJ made minor errors while determining the weight she should assign
16 to the treating physicians in this case, none of these were prejudicial. Therefore, the
17 ALJ’s decision is affirmed.

18 **IT IS THEREFORE ORDERED** that the ALJ’s decision is **AFFIRMED**. The
19 Clerk of Court is directed to terminate and enter judgment accordingly.

20 Dated this 6th day of March, 2017.

21 
22 _____
23 Honorable G. Murray Snow
24 United States District Judge
25
26
27
28